

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0020P**

**Sales Tax**

**Calendar Years 1997, 1998, & 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1997, 1998, & 1999.

The taxpayer operates seventeen department stores located around Indiana. The taxpayer's headquarters are out-of-state.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the penalty should be waived as the error was immaterial in relation to the total sales and use tax paid to the state.

The Department points out the use tax error was 15% of the total use tax liability which the Department considers to be material. Furthermore, the error was an issue in the prior audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer’s penalty protest is denied.

**FINDING**

The taxpayer’s penalty protest is denied.